

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SHANNON PEREZ, et al.,
Plaintiffs

CIVIL ACTION NO. 11-CA-360
OLG-JES-XR
(Lead Case)

V.

STATE OF TEXAS, et al.,
Defendants

PLAINTIFF MALC'S PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The Plaintiff MALC submits these proposed findings of fact and conclusions of law in response to the Court's order of August 27, 2014. The following findings of fact and conclusions of law are relevant to a determination of whether the State's enacted 2011 State House and Congressional redistricting plans violate the Voting Rights Act and United States Constitutional.

FINDINGS OF FACT

General and Background Facts and Totality of Circumstances

Dramatic Population Growth

1. On or about February 17, 2011, the United States Department of Commerce and the United States Census Bureau released to the State of Texas the population

data gathered as a result of the conduct of the 2010 Census. (R, Dkt. 277, p.22, stip. 71).¹

2. According to the 2010 Census, the State of Texas has a total population of 25,145,561, of whom 45.3 percent are non-Hispanic white, 37.6 percent are Hispanic, and 11.8 percent are non-Hispanic African American. (MALC Exhibits 47, 139, p. 4; R, Dkt. 277, p. 22, stip. 74, 75) Thus, almost half of Texas's total population is minority.

3. Texas gained 4 congressional seats as a result of its population growth from 2000 to 2010. (MALC Exhibit 19 Kousser Report, at p. 109; Trial Transcript (Tr) p. 69, lines 8-9, *See* R, Dkt. 277, p. 24, stip. 107, 108)

4. The 2010 Census count for Texas shows that the population of the state had increased by 4,293,741 individuals—from 20,851,818 in 2000 to 25,145,561 in 2010. (MALC Exhibit 20, p.4; MALC Exhibit 139, p 4; R, Dkt. 277, p. 22, stip. 73, 74)

5. In 2010, more than one out of every three Texans was Hispanic. (MALC Exhibit 20, p.4 & tbl. 1; MALC Exhibit 139, p. 4)

6. Between 2000 and 2010, the growth rate of the Hispanic population in Texas outpaced that of the Anglo, Black and “other” populations. (MALC Exhibit. 139, p. 4)

¹ Citations to the documents filed in this case will be to the docket number associated with the filing denoted as Dkt. followed by the number associated with the filing. As an example the amended complaint filed by MALC in this case will be referenced as Dkt. 50.

7. In each year from 2005 to 2009 the number and proportion of the Hispanic CVAP population has increased. (MALC Exhibit 20, p.11). In these five years, the Hispanic citizen voting age population increased from 24.6% of the state's total citizen voting age population to 26.5%. (U.S.A. Exhibit 41)
8. In contrast, the non-Hispanic Anglo population increased in number but its proportion of the total population has decreased. (MALC. Exhibit 20, p.11)
9. The growth of the Hispanics and other minority population from 2000 to 2010 accounted for about 90% of total growth in Texas. Hispanics accounted for about 65% of that growth. (Tr. Vol. 4, p. 1386, MALC Exhibit 139; R, Dkt. 277, p.22, stip. 81).
10. Hispanics make up the majority of the population in the Rio Grande Valley. (MALC Exhibit 47, Table 1; Ex. 419 ¶ 6 [Dkt. 330-5, at p. 97]).
11. There has been substantial growth in the Latino population of the Rio Grande Valley in the last ten years. (MALC Exhibit 47, Table 1; Ex. 419 ¶ 5 [Dkt. 330-5, at p. 97].)
12. In Cameron, Dallas, El Paso, Nueces and Webb counties, the Latino growth from 2000 to 2010 in each county exceeded the total growth for the county, suggesting that these counties not only saw substantial growth in their Hispanic communities, but also a reduction in their non-Hispanic populations. (MALC Exhibit 47, Table 1.)

13. In Travis and Tarrant Counties more than half of total inter-census growth was attributable to Hispanic growth. (MALC Exhibit 47, Table 1.)

14. Bexar, Cameron, Dallas, Ector, Harris, Hidalgo, Lubbock, Midland, Nueces, Tarrant, Travis, and Webb counties, which already contained significant Hispanic population in 2000, all saw substantial growth in their Latino residents by 2010. (MALC Exhibit 47, Table 1; MALC Exhibit 142 and 145; Tr. Vol. 4, pp. 1392-3, 1423, and 1432.)

15. The population of Cameron County grew from 335,227 in 2000 to 406,220 in 2010. (MALC Exhibit 47, Table 1)

16. In 2010, persons of Hispanic origin comprised 88.1% of the population of Cameron County. (MALC Exhibit 47, Table 1)

17. The population of Hidalgo County grew from 569,471 in 2000 to 774,769 in 2010. (MALC Exhibit 47, Table 1).

18. In 2010, persons of Hispanic origin comprised 90.6% of the population of Hidalgo County. (MALC Exhibit 47, Table 1)

19. The population of El Paso County grew from 679,622 in 2000 to 800,647 in 2010. (MALC Exhibit 47, Table 1)

20. In 2010, persons of Hispanic origin comprised 82.2% of the population of El Paso County. (MALC Exhibit 47, Table 1)

21. In 2010, persons of Hispanic origin comprised 60.6% of the population of Nueces County, representing an almost 5% increase since 2000. (MALC Exhibit 47, Table 1)
22. The population of Harris County grew from 3,400,590 in 2000 to 4,092,459 in 2010. (MALC Exhibit 47, Table 1)
23. Harris County saw nearly 80% of its inter-census growth attributable to Latinos. (MALC Exhibit 47, Table 1)
24. The Texas Hispanic population in 2000 was 6,669,666 persons. The Texas Hispanic population grew to 9,460,921 persons in the year 2010. (MALC Exhibit 47, Table 1)
25. The total Hispanic citizen voting age population in Texas in 2010 was 3,674,800 persons. MALC Exhibit 47, p. 10. (Table 7 from Chapa report).
26. In 2010, persons of Hispanic origin comprised 37.6% of the population of Texas. (MALC Exhibit 47, Table 1; R, Dkt. 277, p. 22, stip.83)
27. While the total population of Texas increased by 20.59%, the Hispanic population increased by 41.9%. (MALC Exhibit 47, Table 1)
28. The Latino population growth between 2000 and 2010 is likely to continue given the young age structure of the Latino population relative to its non-Latino White counterpart. (MALC Exhibit 139)

29. The United States House of Representatives consists of 435 members apportioned among the States according to population after each decennial census. After the 2000 Census, the State of Texas was entitled to 32 representatives, and federal law then required the State to redistrict. (Dkt 50, para. 50, Dkt. 110, para. 50)

30. On August 4, 2006, a three-judge district court, in *LULAC v. Perry*, 2006 WL 3069542, Civ. No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006) (per curiam), adopted a redistricting plan for Texas' congressional delegation based on the 2000 Census. That plan was the last plan in force or effect prior to the adoption of C185 and is therefore the benchmark congressional plan for purposes of this case. (R, Dkt. 277, p. 24, stip. 105-106)

31. The benchmark redistricting plan is also known as Plan C100. *Id.*

32. After the 2010 Census, the State of Texas was entitled to four additional representatives in Congress, for a total of 36 representatives, and federal law once again required the State to redistrict. *Id.* at p. 24, stip 107.

33. The ideal population for each of the 36 congressional districts in Texas is 698,488. *Id.* at p. 24, stip 108

34. SB 4 (C185), containing a new congressional redistricting plan based on the 2010 Census, passed the Texas Senate on June 6, 2011, and passed the Texas House on June 15, 2011. Senate Bill 4 was reported to the Senate as amended on

June 16, 2011. It was reported enrolled on June 20, 2011. On June 24, 2011, SB 4 was sent to the Governor. SB 4 was signed by the Governor on July 18, 2011. (R Dkt. 277, p. 25, stip.116-120).

35. Senate Bill 4 passed the Texas Senate on June 6, 2011. Senate Bill 4 passed the Texas House of Representatives on June 15, 2011. *Id.*

36. The plan contained in Senate Bill 4 is also known as Plan C185. *Id.*

37. The Texas House of Representatives consists of 150 members elected from single-member districts in even-numbered years to two-year terms. (R, Dkt. 277, p. 22, stip. 85.)

38. Based on the 2010 U.S. census, the ideal population for each State House district is 167,637. R, Dkt. 277, p. 22, stip. 86).

39. On November 28, 2001, in *Balderas v. Texas*, 2001 WL 34104833, Civ. No. 6:01CV158 (E.D. Tex. Nov. 28, 2001) (per curiam), a three-judge district court adopted a redistricting plan for the Texas House of Representatives based on the 2000 Census. That plan was the last plan in force or effect and is therefore the benchmark Texas House plan for purposes of this case. (R, Dkt. 277, p. 23, stip. 87-88).

40. The benchmark House redistricting plan is also known as Plan H100. *Id.*

41. On May 23, 2011, the Texas Legislature passed House Bill 150, containing a new redistricting plan for the Texas House of Representatives based on the 2010

Census, and the Governor signed it on June 17, 2011. (R, Dkt. 277, p. 23, stip. 86-94)

42. The plan contained in House Bill 150 is the legislatively enacted plan for purposes of this case. *Id.*

43. The plan contained in House Bill 150 is also known as Plan H283. *Id.*

44. On April 28, 2011, the Texas House of Representatives passed an engrossed version of House Bill 150. The House Journal shows a vote of 92-54-3. *Id.*

History of Discrimination and its Continuing Effects

45. Texas has a long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process. (*Lulac v. Perry*, 548 U.S. 399, 439, (2006); Tijerina Report, Ex. J-52, at 10:18-11:12; Tr.-1, p. 592-96).

46. The effects of the historical discrimination continue to the present day. (Tr. - 1, p. 560-577).

Lack of Proportionality

***Gingles* Factors**

Racial and Ethnic Voting Polarization – *Gingles* II and III

47. Elections in Texas historically and through the present time have been marred by racially and ethnically polarized voting. (*Lulac v. Perry*, 548 U.S. 399,

427, (2006); MALC Exhibit 19 at 26-44; MALC Exhibits 161-166; Tr. Vol. 3, pp. 968-970).

48. Voting in recent Texas elections has been ethnically polarized. Latinos and non-Latinos vote differently. (Kousser Report at 32-33; MALC Exhibit 19 at 26; MALC Exhibits 161-166; Tr. Vol. 3, pp. 968-970).

49. Polarized voting is not simply a function of partisanship. Ethnic polarization is often even more stark within Democratic primaries when Latino candidates run against non-Latino candidates than it is in general elections. (Kousser Report at 32-33; *Perez* Tr. Exhibit P19 at 26; Brischetto Report, MALC Exhibits 161-166)

50. Latino voters in Texas overwhelmingly favor Democratic nominees, even when Republican nominees have Spanish surnames. (Kousser Report at 32-33; Exhibit 19 at 26)

51. African-Americans supported Latino Democratic – but not Republican – candidates in the general election almost unanimously. Majorities of “other” ethnic groups supported Latino candidates, regardless of party, in the general election. (Kousser Report, at 59; Exhibit 19 at 53)

**New and Additional Majority HCVAP and Majority Minority
CVAP Districts – Texas House of Representatives – *Gingles I*
September, 2011 Submission**

52. MALC and other parties have submitted to the court and during the legislative session putative districts that are compact, contiguous and are over 50%

HCVAP that are not contained in the challenged enacted plan for the Texas House of Representatives. (MALC Exhibit. 1, 2, 5, 6; MALC Interim Plan Exhibits 8, 9)

53. MALC HD 144 in plans H205, H295 is a compact, contiguous and majority HCVAP district in Harris County, Texas. The creation of HD144 does not adversely impact on the viability and continued performance of existing minority opportunity districts in Harris County. *Id.* These districts do not exist in the enacted plan.

54. MALC HD 81 in plans H205, and H295 is a compact, contiguous and majority HCVAP district in West Texas. The creation of HD81 does not adversely impact on the viability and continued performance of existing minority opportunity districts in west Texas. *Id.* These districts do not exist in the enacted plan.

55. MALC HD 72 in plan H205, HD 35 in H295 and HD 144 in plan H201 are compact, contiguous and majority HCVAP districts in Hidalgo and Cameron Counties, Texas. The creation of HD 72 in H205, HD 35 in H295 and HD144 in H201 does not adversely impact on the viability and continued performance of existing minority opportunity districts in Hidalgo and Cameron Counties. *Id.* These districts do not exist in the enacted plan.

56. MALC HD 33 in plans H205, H201 and H295 is a compact, contiguous and majority HCVAP district in Nueces County that is not contained in the enacted plan. *Id.*

**New or Additional Majority HCVAP Districts and Majority
Minority CVAP Districts -Texas House Districts – *Gingles I* – July
2014**

Midland/Odessa

57. MALC and other parties have submitted to the court and to the Legislature during the First called Special of the 83rd Legislative Session putative districts that are compact, contiguous, and are over 50% HCVAP that are not contained in the challenged enacted plan for the Texas House of Representatives in the Midland and Odessa region. (MALC Exhibits 91-96).

58. MALC submitted a map of a plan that modified H283 in only two districts, paired no incumbents, and split no VTDs. *See* MALC Exhibits 91-93 (Plan H360, HD 81), (Tr. Vol. IV, p. 1398-1398, 1400 (Korbel Testimony)).

59. The plan still created a district that was 56.3% Hispanic voting age population and 50.1% HCVAP. MALC Exhibit 93; Tr. Vol. IV, p. 1399-40.

60. In addition, plan H360, produced a district that was reasonably compact when compared to the comparable districts in H283. (MALC Exhibits 90, 93).

61. The “Area to Rubber Band” compactness score for HDs 81 and 82 in H283 were .78 and .74 respectively, while the compactness score for H360’s HD 81 was .76). (*See* Tr. Vol. IV, p. 1401).

62. Plaintiff MALC also submitted Exhibits 94-96 in support of a Midland/Ector Counties district. Plan H329, HD 81 had a higher HVAP at 61.4%, higher HCVAP

at 55.3%, and a similar compactness score at .74 on the Area to Rubber Band measure without splitting VTDs. However, the district in Plan H329 required modification of more than 2 districts. These plans did not maximize Hispanic voting strength either as higher concentrations were possible had voter tabulation districts (VTDs) been split. (MALC Exhibits 94-96; Tr., Vol. IV, pp. 1399).

Lubbock County

63. Plaintiff MALC also submitted a putative *Gingles I* district for the Lubbock County area. Plan H329 creates a district in Lubbock County, HD 88, which is over 50% HCVAP, was reasonably compact, split only the same county already split under H283 in Lubbock, and brought together a cohesive Hispanic population to provide an opportunity for electoral success. (MALC Exhibits 100-102).

64. HD 88 in plan H329 contains a Hispanic voting age population of 54.3% and a Hispanic citizen voting age population of 50.9%. (MALC Exhibit 102).

65. The evidence presented by MALC showed that in Lubbock County a county commissioner district with 52% Hispanic population elects a Hispanic county commissioner, Commissioner Lorenzo “Bubba” Seden. (Tr., Vol. II, pp. 451-2 (Seden testimony)).

66. H283 divided Hispanic voters between districts in the Lubbock and surrounding counties. H329 brought together counties with significant Hispanic population. (Tr. Vol. II, pp. 479-485).

67. With regard to compactness, the HD 88 has a compactness score on the “Area to Rubber Band” measure of .623 while H283’s HD 83 is a less compact .576. Thus, the MALC plan again, did not ignore traditional redistricting principles in order to create a Hispanic majority CVAP district, but rather adhered to such principles. (MALC Exhibits 100-102).

68. HD 88 in HD 329 splits Lubbock County in the same way that previous counties were split in Texas historic redistricting maps, specifically Brazoria County. (*See* Closing Arguments, p. 129-130 (Garza rebuttal); *see also* MALC Exhibit 157; *see also* *Graves v. Barnes*, 343 F. Supp. 704 (W.D. Tex. 1972)(Legislative Redistricting Board adopted, modified by the Court. Brazoria County’s excess population is split between HD 31 & HD 21. Smith County’s excess is also split. Hidalgo County’s excess is split between HD 51 & HD 49); S.B. 590, 63rd Legislature (same cuts as Graves.); H.B. 1097, 64th Legislative Session (same cuts and use of double spillover as previous maps); H.B. 1389, 68th Legislative Session (Brazoria County’s excess is split between two districts, HD 27 & HD 29. Jefferson County’s excess is also split between two districts, HD 21 & HD 20. Colin County’s excess is also split between two districts, HD 61 & 62.); H.B. 753, 69th Legislature (same cuts as H.B. 1389).

Nueces County

69. Prior to the 2011 redistricting, Nueces County included two Hispanic opportunity districts. (MALC Exhibit 106; Tr. Vol. II, p. 633 (Herrero testimony)).

70. In the state's plan H283, HD 33 was removed from Nueces County and transferred to Rockwall County in north Texas, reducing the number of Hispanic opportunity districts in Nueces County to just one.(MALC Exhibit 105; Tr. Vol. 2, p. 646.)

71. At the initial trial MALC submitted plan H205 with two Hispanic majority districts in Nueces County: HD 33 with 60.3% HVAP, 56% SSVR, and 58% HCVAP and HD 34 with 65% HVAP, 59% SSVR, and 63% HCVAP. (Tr.-1, pp. 79-80; Plaintiff MALC's Exhibits 1, 2, and 46 at p. 46.9).

72. MALC *Gingles* Plan H329 with two districts, HD 30 and HD34 in Nueces County having majority Hispanic population, voting age population and citizen voting age population. (MALC Exhibits 107-109).

73. Splitting only Nueces County, HD 32 in Plan H329 is composed of 63.2 % Hispanic population, 59.5% Hispanic voting age population, and 59.5% Hispanic citizen voting age population. HD 34 in Plan H329 is composed of 70.4% Hispanic population, 67.2% Hispanic voting age population, and 65.9% Hispanic citizen voting age population. The districts created in the Nueces County area for Plan H329 have similar or more compact scores when compared with the compactness

scores for districts in the same area in both H283 and H100. (*See* MALC Exhibits 106 (H100), 105 (H283) and 109 (H329)).

74. MALC also submitted Plan H373 with two Hispanic opportunity districts for the Nueces County. HD 32 in Plan H 373 is a Hispanic opportunity district with 63.2% Hispanic population, 59.5% Hispanic voting age population, and 59.5% Hispanic citizen voting age population. HD 34 is a Hispanic opportunity district with 70.3% Hispanic population, 67.2% Hispanic voting age population, and 65.9% Hispanic citizen voting age population. (MALC Exhibit 112).

75. MALC's Plan H373 affects fewer districts and plugs into H283. (*See* MALC Exhibit 110).

76. All of the districts in Nueces County in Plans H 329 and H 373 compactness scores are equal or better than those for similar districts in Plan H 283. (*See* MALC Exhibits 109 (Plan H 329), 112 (Plan H373), and 105 (Plan H283)).

77. The state seems to have pre-determined that it would eliminate one of the minority opportunity districts in Nueces County, even before districts were being drawn and even before the census population was released. (Tr. Vol. II, p. 645).

78. In 2010, Representatives Herrero and Ortiz were forewarned of the impending loss of a minority opportunity district by the Texas Speaker of the House of Representatives. (Tr. Vol. II, p. 645).

Bell County

79. The enacted state house map, Plan H 283, in Bell County contained two districts neither of which is a minority opportunity district. HD 54, a multi-county district, which contained most of the City of Killeen, had a African American CVAP of 23.5%, a Latino CVAP of 17.0%, and an Asian CVAP of 2.8%. This combined to make HD 54 a 43.3% Minority CVAP. (MALC Exhibit 114).

80. MALC presented several *Gingles* plans associated with Bell County. MALC Plan H 329 contains a putative Section 2 district, which had a 51.6% minority CVAP population. The African American CVAP was 29.4%. The Latino CVAP was 19.1%. The Asian CVAP was 3.1%. (MALC Exhibit 117).

81. Nearly the entire City of Killeen was contained within HD 54 in the benchmark. Only a few low or zero population blocks of the City of Killeen were excluded from HD 54 in the benchmark. In addition, the City of Killeen had been kept whole historically. (Tr. Vol. 4, p. 1402-3. (Korbel testimony)).

82. Under the benchmark plan, Plan H 100, HD 54 was overpopulated by 29,000. In H 283, HD 54 dropped Burnet County, which removed 42,000 people from HD 54, leaving 13,000 more to be placed back into HD 54 from Bell County. (Tr. Vol. 4, p. 1401-2).

83. Rather than just adding 13,000 in population to HD 54, the State in H 283 took out 32,903 people who had previously resided in HD 54, two-thirds of which are minority. (Tr. Vol. 4, p. 1404).

84. After excluding this large minority population out of HD 54, the State added 46,937, which were 60 % Anglo making it far more difficult for minorities to elect the candidate of their choice. (Tr. Vol. 4, p. 1404).

85. MALC *Gingles* Plan H 364 shows how joining the City of Killeen with Ft. Hood was all that was required to create a district that was not malapportioned. (Tr. Vol. 4, p. 1407).

86. MALC *Gingles* Plan H 364 is also a minority opportunity district. It had a minority CVAP population of 52.2%. (MALC Exhibit 120).

87. Plan H 364 compactness scores are equal to or exceed the compactness scores of similarly situated districts in Plan H 283. (MALC Exhibit 120 (Plan H 364); MALC Exhibit 114 (Plan H 283)).

88. Plan H 364 also unifies the minority community in Bell County. (MALC Exhibit 119).

89. The minorities in Bell County unify to vote as a block in the general election and Anglo voters unify and vote as block to defeat the minority candidate of choice. (Tr. Vol. 3, p. 356 (Brischetto testimony)).

Fort Bend, Wharton, and Jackson

90. Fort Bend, Wharton, and Jackson Counties experienced a large increase in minority population growth between 2001 and 2010. The minority population contributed 80% of the population growth for these three counties. Of the 185,649 people added to these three counties, 65,311 were Asian or Other, 53,157 were African American, and 67,181 were Latino. Only, 45,050 were Anglo. (MALC Exhibit 154).

91. Because of this population growth, the Legislature added a new house district, HD 85, to these counties. In spite of the minority character of this growth, HD 85 is not a minority opportunity district. Tr. Vol. 4, p. 1412-13. (Korbel testimony).

92. A heavy concentration of minority Texans in Fort Bend County is divided into 4 districts, which has the effect diminishing the electoral opportunities of minorities. Tr. Vol. 4, p. 1416-17. (Korbel Testimony).

93. In Plan H 283, the enacted plan, the State created 4 districts within Fort Bend, Wharton, and Jackson Counties. Only one of which is minority opportunity district, HD 27. MALC Exhibit 125.

94. MALC *Gingles* Plan H 329 creates two minority opportunity districts in Fort Bend, Wharton, and Jackson Counties. HD 27 in Plan H 329 is a minority majority CVAP district with 68.8 % minority CVAP (45.6 % African American CVAP,

15.9% Latino CVAP, and 7.3 % Asian CVAP). In addition, HD 26 in Plan H 329 is also a minority majority CVAP district with 70.9% minority CVAP (16.5% African American CVAP, 13.6% Latino CVAP, 30.8% Asian CVAP). MALC Exhibit 128.

95. MALC Gingles Plan H 366 shows an alternate way to enhance minority opportunity in these counties. HD 27 in Plan H 366 is a minority opportunity district with a 73.7% minority CVAP (48.1% African American CVAP, 16.1% Latino CVAP, and 9.5% Asian CVAP). HD 85 in Plan H 366 is also a minority opportunity district with 65.1% minority CVAP (23.9% African American CVAP, 30.4% Latino CVAP, and 10.8% Asian CVAP). (MALC Exhibit 131).

96. The minorities in Fort Bend County vote as a block for their preferred candidate of choice. The Anglo majority in Fort Bend County vote as a block to defeat their preferred candidate of choice. (MALC Exhibit 161).

DISCRIMINATORY INTENT – TEXAS HOUSE OF REPRESENTATIVES

97. In addition to the foreseeability of the discriminatory consequences of the manner in which H283 was drawn, there are a number of other objective indicia of discriminatory intent. (MALC Exhibit 19, pp. 54-133).

One Person, One Vote

98. First, the State systematically underpopulated majority Anglo districts and systematically overpopulated majority Latino districts, contrary to the leading

federal court case on the topic, a case publicly brought to the legislature's attention at the beginning of the redistricting process. (MALC Exhibit 19, pp. 54- 69).

99. The State did not attempt to minimize population deviations. (Tr.-1 pp. 1473-1474; Tr.-1 p. 1596, lines 3-6).

100. The histogram developed by MALC expert Dr. Kousser would have resembled a normal curve, with the largest number of districts clustered around zero deviations if the State were drawing district to minimize population variances between districts. Instead, it is more U-shaped, with the largest number of districts between 4 and 5 percent under populated and between 4 and 5 percent over-populated. (MALC Exhibit 19, pp. 6-69).

101. The previous plan, H100, shown in Dr. Kousser's Report at Figure 5a with the original 2000 population census numbers, shows that H.283 is more skewed. (MALC Exhibit 19, at 63; MALC Exhibit 19, p. 61).

102. In H100, 37 of the 150 districts had deviations greater than 4 percent; in H283, 45 districts do. (MALC Exhibit 19, p. 62).

103. Of the 80 Anglo-majority districts, 34 are over-populated and 46 are under-populated. (MALC Exhibit 19, p. 64).

104. Of the 37 Latino-majority districts, 22 are over-populated, and just 15 are underpopulated. (MALC Exhibit 19, p. 64).

105. Of the 15 under-populated Latino districts, 5 are in El Paso County, where the “county line rule” requires that 5 and only 5 districts be drawn, a rule which, applied to the population total in El Paso in the 2010 census, guarantees that the districts must be underpopulated. If these 5 districts were excluded, then more than twice as many Latino-majority districts would be over-populated as under-populated. (MALC Exhibit 19, p. 64).

106. The different patterns of over- and under-population in the proposed districts cannot be explained by any interaction of population patterns with the “county line rule.” (MALC Exhibit 19, p. 66).

107. Compared to districts in rural and suburban/exurban counties, districts in urban counties were generally overpopulated. (MALC Exhibit 19, p. 66-67).

108. Comparing over- and under-population in the proposed House districts corresponding to those now represented by Republicans, all Democrats, and just Latino Democrats in the seven most urban counties in the state - Bexar, Dallas, El Paso, Harris, Hidalgo, Tarrant, and Travis - reveals that Latino Democratic districts are the most adversely affected by population distributions. (MALC Exhibit P19, p. 66-67).

109. Districts then represented by Democrats are more overpopulated under H283, 22 to 17. (MALC Exhibit 19, p. 66).

110. Latino Democratic districts are even more overpopulated: 13 to 6. (MALC Exhibit 19, p. 66).

111. If El Paso, is eliminated, the ratio of overpopulated to underpopulated districts currently represented by Latino Democrats becomes 13 to 3, with an average deviation of 2.27%. (MALC Exhibit 19, p. 66, n. 27).

112. The systematic overpopulation of Latino districts was done deliberately. (MALC Exhibit 19, p. 66-67 (Rep. Armando Walle raises issue during House floor debate); Tr.-1 p. 1596, lines 3-6 and p. 1598, lines 13-18 (Solomons no legal justification for population variances within urban counties and no legal justification for greater overpopulation of Latino districts than Anglo districts testimony); Tr.-1 p. 1474, lines 10-18 (Interiano no attempt to achieve equal population testimony)).

113. The State failed to seriously engage Latino legislators on the plan as a whole, with regard to Latino voter impact, and no race neutral redistricting objectives explain the State's rejection of all substantive amendments from minority legislators. (MALC Exhibit 19, pp. 70-71).

114. All amendments by Latino members aimed at increasing minority representation were rejected both in committee and on the House floor. (MALC Exhibit 19, p. 106).

115. No objective and race neutral justification for the rejection of these amendments is evident from a review of the plans offered by minority legislators in committee or on the house floor. (MALC Exhibit 19, pp. 80-83).

116. Plans were offered by minority legislators and minority advocacy groups that split equal numbers of county lines but greater minority opportunity districts and these plans were rejected. *Id.*

117. Plans that offered greater minority opportunities but with fewer voting precinct splits were offered by minority legislators and minority advocacy groups and rejected. *Id.*

118. Plans that offered greater minority opportunities but with similar compactness scores were offered by minority legislators and minority advocacy groups and rejected. *Id.*

119. Plans that offered greater minority opportunities but with similar or smaller population deviations were offered by minority legislators and minority advocacy groups and rejected. *Id.*

120. The State's treatment of the adjacent counties of Hidalgo and Cameron was inconsistent with the manner in which the Committee employed the county line rule. *Id.* at 88.

121. Rep. Rene Oliviera pointed out during the debate on the second reading, when counted together, Cameron and Hidalgo were due 7.05 representatives. *Id.*

122. Had the State combined, instead of splitting both to add population from other counties, it is possible that a new minority opportunity district could have been drawn in Hidalgo and Cameron counties and an unnecessary county split could have been avoided. *Id.* (See also Interiano testimony Tr. Vol. 5, p. 1545, lines 3-7).

123. The MALC plans drew four districts in Hidalgo, two in Cameron, and one shared by both, and they created a new minority opportunity district. An amendment on the House floor to H283 to create seven seats between the two counties was defeated. *Id.*

124. Mike Villarreal, the vice chairman of the redistricting committee opposed H283 in part for its failure to create an additional Latino opportunity district in Hidalgo and Cameron County. *Id.*

Odd Shaped *Shaw* Type Districts

125. The State's use of district extremely odd shapes in its maps suggests an improper motive behind the redistricting plans. (MALC Exhibit19, pp. 92-107).

126. When these extreme gerrymanders are overlaid on maps that show ethnic and racial shading, the lines follow minority voters in Dallas County and Anglo voters in Hidalgo County. *Id.*

127. Detailed investigations of individual districts, including revealing boundaries, especially when those boundaries are superimposed on ethnic maps,

indicate both bias against minorities and racial gerrymandering. (MALC Exhibit 19, p. 94-96).

128. Those in charge of the redistricting process attempt to avoid responsibility for the impact of the maps by providing inconsistent and contradictory explanations for how the process was followed or no explanation at all. (MALC Exhibit 19, pp. 87-94).

129. In Harris County, no reason was offered for the population variances between HD144 (underpopulated substantially and held by an Anglo Republican at the time of redistricting) and adjacent Hispanic opportunity districts HD 147 and HD 145 (both substantially over-populated). (Tr.-1, p. 1598, (Solomons testimony)).

Whole County Pretext

130. There have been dozens of deviations from the whole county line rule in every state house map since 1973, up to and including Plan H 283. (MALC Exhibit 157, 169).

131. The Texas Legislature was advised by its counsel that the Whole County Rule must yield to the requirements of the Voting Rights Act. The Texas Legislative Council PowerPoint by Senior Legislative Council David Hanna on the County Line Rule for House Districts presented on March 1, 2011 states, “Basic Rule: A county may be cut in drawing a house district only when required to

comply with: the one-person, one-vote requirement of the 14th Amendment to the United States Constitution; or the Voting Rights Act.” (DX381, p. 51; *see also* MALC Exhibit 48, page 9.)

132. The Texas Legislative Council (TLC) advised in its publication that the “that the provisions of Section 26 [the Whole County Rule] must be enforced as written to the extent possible without violating federal redistricting standards.” In fact, the TLC advised that: “because of conflicts with the federal law governing redistricting, Section 26, Article III, Texas Constitution, cannot be given full effect as written.” (MALC Exhibit 167, p. 10, 17).

133. Despite this advice, Texas developed a new conception of the whole county line rule that deviated from its previous practice. The legislative redistricting decision-makers adopted a policy that the Whole County Rule trumped federal law. (Tr. Vol. 6, p. 1447. (Interiano Testimony)).

134. In fact, Chairman Burt Solomons was unequivocal that in a conflict with the Voting Rights Act obligations under the Texas constitutional requirement would control. (Tr. Vol. 7, pp. 1592-95).

135. This deviation from normal procedure and new found overzealousness prevented the creation of a new Hispanic opportunity district in Hidalgo and Cameron Counties. Initially, Mr. Interiano interpreted the Whole County Rule as

wholly preventing the creation of the Hidalgo & Cameron district. (Tr., Vol. 5, p. 1540, lines 13-24. (“I believe that splitting -- that having both of those counties be split was a violation, in and of itself.”)).

136. Mr. Hanna also testified that if Section 2 required the creation of an additional minority opportunity district in the area of Nueces County, the whole county line rule could not stand in the way because of the Supremacy Clause of the United States Constitution. In fact, if the whole county line rule conflicted with federal law, Mr. Hanna believed that the whole county line rule must yield to federal law. (Tr. Vol. 4, p. 1208-09. (Hanna Testimony) *See also* Tr.-1, p. 76 (Martinez Fischer testimony that that was the instruction from Legislative Council.)).

137. Mr. Hanna’s specific advice as to Section 2 would trump the whole county line rule if all the Gingles factors were met. (Tr. Vol. 4, p. 1209, lines 21-22).

138. Gerardo Interiano eventually acknowledged combining population from Hidalgo County with population from Cameron County would not in and of itself breach the whole county provision but in his opinion would cause a county break to the north of Hidalgo and Cameron. (Tr. Vol. 5, p. 1542, lines 3-6).

139. In the Court's interim map, H 309, the Court created the Hidalgo/Cameron Section 2 district without causing a County Line to be cut North of Hidalgo or Cameron County. (R, Dkt. 682, (Plan H 309)).

140. Based on its erroneous interpretation of the whole county line rule, the State failed to create *Gingles* I districts in Lubbock, Midland/Odessa, Nueces County, and Hidalgo/Cameron. (Tr. Vol. 5, p. 1542, lines 3-6 (Cameron/Hidalgo); MALC Exhibits 71-76 (Record Votes on MALC Amendments, which contained Midland/Odessa, Nueces County, and Cameron/Hidalgo amendments, during the 83rd Legislative Session); (plans rejected because county line was broken to create minority opportunity districts. Tr.-1, pp. 1593-1595)).

Racial Intent – the Legislative Process

141. The legislative process did not provide a fair opportunity to participate in the process in a meaningful way. (MALC Exhibit 19, pp. 87-88).

142. Chairman Burt Solomons did not attend any of the hearings held in the inter-session between the 81st Legislature and the 82nd 22 Legislature. (Tr.-1, p. 1556)

143. On January 24, 2011, the Texas House of Representatives rejected a rules adoption seeking that all legislative approved maps comply with the Voting Rights Act. (*Texas* Tr. Exhibit DX381, pp. 22-24.)

147. Chairman Solomons admitted that, although it was called by the Committee Chairman he did not attend the House Redistricting public hearing on Sunday, April 17, 2011. (Tr-1. pp. 1624, lines 3-4.).

148. House Bill 150, the House Redistricting map, was heard, amended and voted out of the Texas Redistricting Committee on April 19, 2011, in Room 1W.14 without any live public broadcasting or any ability to view an archived video. (Tr-1. pp. 1624, lines 3-4.)

149. MALDEF submitted a letter to Chairman Solomons on April 27, 2011 regarding the proposed redistricting plan (H153) for the Texas State House of Representatives and notifying the Chairman that Latinos already possessed the ability to elect their candidates of choice in benchmark House District 90 and House District 148. The letter states that by raising the SSVR in those districts, the plan does not create new Latino opportunity districts that can offset the loss of District 33. (Tr-1. Pp. 1600-1601.)

150. The House Redistricting Committee held a public hearing on the concept of Congressional redistricting, but never held a hearing to take public comment on the Congressional map that was actually passed by the Committee. (Tr.-1, pp. 1571:22-1572:3.)

151. Chairman Seliger, the chairman of the Senate Select Committee on Redistricting, did not work with Chairman Solomons on the State House Map. (Tr.-1, p. 1564:11-20.)

152. Chairman Solomons did not offer any amendments to the House Plan that added additional Latino opportunity districts. (Tr.-1, p. 1588:9-11.)

153. Chairman Solomons did, however, carry the racially charged Sanctuary Cities bill. (Tr. -1, p. 1853: 4-10)

154. Chairman Solomons does not know how legislative counsel verified whether an additional Latino opportunity district was necessary. (Tr. -1, pp. 1603:21-1604:2.)

155. The regression analysis that Chairman Solomons relied on came from the Office of the Attorney General. (Tr., Vol. 4, pp. 1019-1025)

156. Chairman Solomons had an unclear idea of where important data was coming from because he was reading what was given to him by staff as to various issues and responses. (Tr. Vol. IV, p. 1015)

157. Chairman Solomons viewed the Attorney General's Office and the Texas Legislative Council as backup staff to his general counsel and his chief of staff. (Tr. Vol. IV, p 1026).

158. The summaries of the regression analysis that Chairman Solomons and his staff relied on were not shared with minority legislators on the redistricting committee. (Tr. Vol. IV, pp. 1023-24)

159. Chairman Solomons was advised by staff that he could not decrease the number of protected districts in a given plan without violating the Voting Rights Act. (Tr. Vol. IV, p. 1028)

160. Chairman Solomons does not remember announcing the number of protected districts or the standard used to determine protected districts under the Voting Rights Act in the same manner that he announced the standards for the Texas County Line Rule, but did tell members the Mr. Downton or Mr. Interiano could provide that kind of information. (Tr. Vol. IV, pp. 1028-29)

161. Chairman Solomons testified that he relied on staff to tell him the number of ability to elect districts and standard to determine them. (Tr. Vol. IV, pp. 1030-31)

162. Chairman Solomons does not remember how many protected districts existed based on his conversation with staff during the session. (Tr. Vol. IV, pp. 1029-1032)

163. Chairman Solomons did not form any independent concerns that one of the state's plan lacked a sufficient number of Latino opportunity districts. (Tr. Vol. IV, p. 1032)

164. Chairman Solomons did not tell any of the County delegations or members that they needed to add another additional Latino majority district. (Tr. Vol. IV, p. 1032)

165. Chairman Solomons never went to any county delegations and told them that would have to draw another Latino majority districts. (Tr. Vol. IV, p. 1032)

**New or Additional Majority HCVAP Districts Congressional Districts –
*Gingles I***

166. MALC plans C122, C123, C163, C 164, and C187, all produced 7 HCVAP majority districts in South/Central Texas. The seven majority HCVAP districts are compact, contiguous and do not adversely impact on the performance of existing Latino opportunity districts in South Texas. The enacted plan only has at most six such districts in South/Central Texas. (MALC Exhibit 7-18).

167. MALC plan C211 and PLANC188 have 8 HCVAP majority districts in South Texas. The eight majority HCVAP districts are compact, contiguous and do not adversely impact on the performance of existing minority opportunity districts in South Texas. The enacted plan only has at most six such districts in South Texas. (MALC Exhibits 17,18; *Perez* Interim Map Exhibits 6,7)

DISCRIMINATORY INTENT – TEXAS CONGRESSIONAL DISTRICTS

168. The congressional plan was the result of a secretive process from which

minority legislators were excluded, raising questions by those actions about the intent of the dominant legislators. (Kousser Report, at 96; MALC Exhibit, 19, p. 108)

169. Senator Gallegos, Senator Lucio, and Senator Uresti offered a proposed alternative congressional map, Plan C131, on the Senate Floor on June 6th in which Congressional District 23 performs in ten out of ten elections.

170. Senator Gallegos's statewide substitute map was tabled in committee on June 3, 2011.

171. The Senate Redistricting committee did not hold any hearings on Congressional redistricting that featured a proposed map by the committee during the regular session.

172. A scheduled Senate Redistricting Committee on May 19th on the Congressional Plan during the regular session was cancelled.

173. Alternative maps for the congressional plan that proponents claimed better reflected the growth of the minority community were introduced and rejected during the Special session.

174. SB 4, the proposed legislation enacting the congressional map, passed both the House and Senate chamber in approximately two weeks.

175. The Senate realized that the House draft on the congressional plan was much more advanced and the Senate took more of House ideas because of time. (Tr. - 1, pp. 1607:3-1608:14.)

176. No hearings with Congressional maps proposed by the legislative leadership were held during the entire 82nd Regular Legislative Session in either the House or Senate Redistricting Committees.

177. The only proposed Senate Committee Hearing on a Congressional Map (SB 308) during the regular session was cancelled.

178. SB 4, the proposed legislation enacting the Congressional map, passed both the House and Senate Chambers in 16 days including weekends during the special session.

179. Chairman Seliger confirmed that during the Special Session, S.B. 4, the bill for the Congressional map moved through special session, passing both the House and the Senate in about 2 weeks.

180. Notice for the House Redistricting Committee on HB 4, the companion bill for SB 4, was provided on June 1 for a public testimony hearing on June 2, 2011 and no subsequent public testimony was allowed for either HB 4 or SB 4 in the House Redistricting Committee.

181. Alternative maps and amendments to the congressional map (SB 4) reflecting minority input, minority communities of interest and adherence to the

Voting Rights Act offered on the House Floor and Senate Floor were rejected. (MALC Exhibit 19, pp. 108-112).

182. Alternative maps and amendments to the congressional map (SB 4) reflecting minority input, minority communities of interest and adherence to the Voting Rights Act offered in the Senate Select Committee on Redistricting and the House Redistricting Committee were rejected. (MALC Tr. Exhibit 19, p. 110).

183. Chairman Seliger admitted that he never asked for the number of minority ability to elect districts for Voting Rights Act compliance in the congressional map.

184. The legislative leadership came to an agreement, the plan was fully divulged only three days before it was considered by the legislature, and instead of holding hearings around the state to invite comments on the plan to facilitate revisions, the legislature held but a single hearing in Austin. (MALC Exhibit 19, p. 108).

185. Sen Kel Seliger, the nominal author of S.B. 4, and Chairman of the Senate redistricting committee, admitted, no minority member of the legislature, and specifically no Latino member, was involved in drawing the plan, and all minority organizations opposed it. (MALC Exhibit 19, p. 108).

Maps as Evidence of Discriminatory Intent, Irregular and Non-Compact Districts

186. As in the State House plan, maps for Congress were used in a discriminatory fashion using extremely odd and jagged shapes resulting in racial gerrymandered districts. (MALC Exhibit 19, pp. 119-132).

187. One of the most blatant examples involves Congressional District (CD) 12 in Tarrant County and CD 26 in Denton and Tarrant Counties. To keep the HVAP of CD12 to 21% and its BHVAP to 35.5%, planners drew a jagged lightning bolt down the center of the district. *Id.*

188. Overlays of CD 26, CD 12, CD 6, and CD 33 onto maps showing minority population concentrations show that the jagged and extremely odd shapes were used to gather minority populations and place them into Anglo dominated congressional districts. (Kousser report at 102-105 and Figures 10-11; *Perez Tr. Exhibit, P19*, pp. 119-132).

CONCLUSIONS OF LAW

1. In 1982 Congress substantially revised § 2 of the Voting Rights Act to clarify that a violation requires evidence of discriminatory effects alone, and to "make clear that proof of discriminatory intent is not required to establish a violation of Section 2." *League of United Latin Am. Citizens # 4434 (LULAC) v. Clements*, 986 F.2d 728, 741 (5th Cir. 1993) (quoting S. Rep. No. 417, 97th Cong., 2d Sess. at 2 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 178 ("*Senate Report*").

2. The Supreme Court first construed the amended version of § 2 of the Voting Rights Act, 42 U.S.C. § 1973, in *Thornburg v. Gingles*, 478 U.S. 30, (1986). In *Gingles*, the plaintiffs were African-American residents of North Carolina who alleged that multimember districts diluted minority voting strength by submerging black voters into the white majority, denying them an opportunity to elect a candidate of their choice. The Court identified three "necessary preconditions" for a claim that the use of multimember districts constituted actionable vote dilution under § 2: (1) the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district," (2) the minority group must be "politically cohesive," and (3) the majority must vote "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Id.* at 50-51. The Court later held that the three *Gingles* requirements apply equally in § 2 cases involving single-member districts, such as a claim alleging vote dilution because a geographically compact minority group has been split between two or more single-member districts. *Grove v. Emison*, 507 U.S. 25, 40-41, (1993). The first of the *Gingles* preconditions is commonly referred to as *Gingles I*.

Gingles I

3. With regard to *Gingles I*, the Supreme Court recently established that only by presenting a majority-minority district could minority plaintiffs satisfy the first *Gingles* precondition. *Bartlett v. Strickland*, 129 S. Ct. 1231, 1244 (2009). ("We

find support for the majority-minority requirement in the need for workable standards and sound judicial and legislative administration”). The Court defined majority-minority district as those that contain at least a majority of minority voting age population. *Strickland*, 129 S. Ct. at 1242 (“In majority-minority districts, a minority group composes a numerical, working majority of the voting age population.)

4. Under present doctrine, § 2 can require creation of these districts. In the Fifth Circuit, “a working majority of the voting age population” has been determined to mean a district in which the minority group is at least 50% of the citizen voting age population of a single member district. *Valdespino v. Alamo Heights I.S.D.*, 168 F.3d 848 (5th Cir. 1999) cert. denied, 528 U.S. 1114 (2000).

5. Although, the putative district must be reasonably compact, it need not “have the least possible amount of irregularity in shape” See *Bush v. Vera*, 517 U.S. 952, 977 (1996). The first *Gingles* precondition does not require some aesthetic ideal of compactness, but simply that the minority population be sufficiently compact to constitute a majority in a single-member district. See *Clark v. Calhoun County Miss.* 21 F.3d 92, 93 (5th Cir. 1994).²

² Moreover a proposed district is not cast in stone. It was simply presented to demonstrate that a majority-Hispanic CVAP district is feasible. If a § 2 violation is found, the State will be given the first opportunity to develop a remedial plan.

Gingles II and III

6. Whether the minority group demonstrates it is politically cohesive embodies a similarly functional focus. "If the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests." *Gingles*, 478 U.S. at 51. Like the first *Gingles*' precondition, however, the Court does not expressly define political cohesiveness. Other courts have elaborated.

7. In *Gomez v. City of Watsonville*, 863 F.2d 1407, 1415 (9th Cir. 1988), *cert. denied*, 489 U.S. 1080, 103 L. Ed. 2d 839, 109 S. Ct. 1534 (1989), the Ninth Circuit observed, "the inquiry is essentially whether the minority group has expressed clear political preferences that are distinct from those of the majority." Thus, political cohesiveness is determined by looking at the "voting preferences expressed in actual elections." *Id.* Necessarily, when we examine the evidence of political cohesiveness as voting preferences, we look to the same statistical evidence plaintiffs must offer to establish vote polarization. Indeed, political cohesiveness is implicit in racially polarized voting. *Gingles* stated that one purpose of determining the existence of racially polarized voting is "to ascertain whether minority group members constitute a politically cohesive unit" 478 U.S. at 56.

Racial Bloc Voting

8. *Gingles* adopted a straightforward definition of racial bloc voting provided by the expert witness upon whom the district court had relied. Racial polarization or bloc voting "exists where there is a consistent relationship between the race of the voter and the way in which the voter votes ... or to put it differently, where black voters and white voters vote differently." 478 U.S. at 53, n.21 (internal quotation marks omitted). The Court's focus was twofold: 1) to determine whether the minority group votes cohesively; and, 2) "whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates." *Gingles*, 478 U.S. at 56. The extent to which this bloc voting impairs the minority's ability to elect candidates of their choice, however, must be "legally significant," a sliding scale that varies with the district and a variety of factual circumstances and may emerge more distinctly over a period of time. *Id.* While the Court offered no "simple doctrinal test for the existence of legally significant racial bloc voting," *Gingles*, 478 U.S. at 58, it urged a flexible approach, noting that the isolated success of a minority candidate in a district that usually exhibits vote polarization will not alone negate plaintiffs' showing.

9. In *Gingles*, the district court had relied on expert testimony offered by Dr. Bernard Grofman, who used two methods of analysis of voting patterns, "bivariate ecological regression analysis" and "homogeneous precinct analysis," also called "extreme case analysis." Bivariate ecological regression analysis determines the

degree of relationship between two variables - the relationship between the racial composition in each political unit (the independent variable) and the support provided a particular candidate within that political unit (the dependent variable).

Jenkins v. Red Clay Consol. School Dist. Bd. of Educ., 4 F.3d 1103, 1119 n.10 (3d Cir. 1993), *cert. denied*, 129 L. Ed. 2d 891, 114 S. Ct. 2779 (1994). In an ecological regression analysis, the correlation coefficient shows which data points fall on the straight line. The linear relationship created by the two variables ideally then will pack closely together on a line. The inferences that arise from the analysis are often graphically demonstrated by the statistical method. P's Exhibit 19, pp. 11-16 (Kousser report).

10. While these three pre-conditions are necessary to establish a vote dilution claim, they are not alone sufficient. *Johnson v. De Grandy*, 512 U.S. 997, 129 L. Ed. 2d 775, 114 S. Ct. 2647, 2657 (1994).

11. The Court in *De Grandy*, determined that a court's examination of relevant circumstances is not complete "once the three factors were found to exist, or in the sense that the three in combination necessarily and in all circumstances demonstrated dilution." *Id.* This is so "because the ultimate conclusions about equality or inequality of opportunity were intended by Congress to be judgments resting on comprehensive, not limited, canvassing of relevant facts." *Id.* Failure to prove the totality of circumstances establishes the minority is not harmed by the

challenged practice and rebuts the inference of discrimination arising from proof of the three preconditions. *Uno v. City of Holyoke*, 72 F.3d 973, 980 (1st Cir. 1995).

12. In a review of the totality of circumstances, the court should be guided by the factors identified by Congress commonly referred to as the Senate factors. The Senate Report accompanying the 1982 amendments elaborates on the proof for a § 2 analysis, specifying a "variety of relevant factors, depending upon the kind of rule, practice, or procedure called into question." S. Rep. No. 417, 97th Cong., 2d Sess. 28-29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206-07. The Senate Report added that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *Id.* at 207.

Moreover, "while the enumerated factors will often be pertinent to certain types of § 2 violations, particularly to vote dilution claims, other factors may also be relevant and may be considered." *Gingles*, 478 U.S. at 45 (citation omitted) (footnote omitted). Most importantly, "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality,' and on a 'functional' view of the political process." *Id.* (quoting S. Rep. No. 417, 1982 U.S.C.C.A.N. 177, 208). The lack of electoral *opportunity* is the key. "The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred

representatives." *Gingle*. 478 U. S. at 47. The Senate Report lists the following factors to be considered in the analysis of the totality of circumstances:

- “1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. whether political campaigns have been characterized by overt or subtle racial appeals;
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

While these enumerated factors will often be the most relevant ones, in some cases other factors will be indicative of the alleged dilution.”

Sen. Report *supra*.

13. The United States Supreme Court, in this case, has articulated a new standard for the development of an interim court ordered redistricting plan for current situation: impending elections and no preclearance of newly enacted plans forthcoming. In this instance, this Court is obligated to develop an interim court ordered redistricting plan that commences with the newly enacted plan and modify that plan so that this Court does not sanction violations of the Voting Rights Act and the United States Constitution. *Perry v. Perez*, 565 U.S. ____ (11-713; 11-714; 11-715)(2012) slip opinion at 5 (“A district court making such use of a State’s plan must, of course, take care not to incorporate into the interim plan any legal defects in the state plan.”).

14. Where, as here, a State’s plan faces challenges under the Constitution or Section 2 of the Voting Rights Act, this Court should be guided by that plan, unless the legal challenges to the plans are shown to have a likelihood of success on the merits. slip opinion at 5-6. Moreover, with regard to challenges to the plan under Section 5 of the Voting Rights Act, this Court should avoid prejudging the merits of the preclearance process by evaluating Section 5 challenges now pending before the District Court for the District of Columbia against the State’s plan for a

“reasonable probability” that as to those challenges the State will fail to secure preclearance. slip op. at 6. The Supreme Court defined this reasonable probability as a challenge that is not insubstantial. *Id.*

15. The United States Supreme Court stated that the standard for compliance with the one person, one vote principle does not provide a complete safe harbor, even when a plan has less than a 10% total deviation. Unless the jurisdiction can articulate a legitimate non-racial, non-political reason for its deviation, districts should be as equal in population as is practicable. *Cox v. Larios*, 159 L. Ed. 2d 831, 833 (2004).

16. The population disparities in the Texas House of Representative redistricting plan, H.B. 150, far exceed the allowable deviation under the United States Constitution. The population deviations in the Texas House of Representative redistricting plan, H.B. 150, cannot be justified by any legitimate state redistricting interests incorporated in any state statutes or state constitutional provisions. The deviations as described above reflect an attempt to disadvantage Latino voters using population disparities especially in Hidalgo County, Harris County, Dallas County and Tarrant County. Therefore, Plaintiff MALC has succeeded on the merits of its Constitutional One Person, One Vote claim.

17. The State has used Article III, § 26, of the State of Texas Constitution as a pretext to avoid drawing a new Latino majority districts in South Texas, West

Texas and Nueces County; and by placing Hispanic population from Hidalgo and Cameron Counties into existing Hispanic majority Texas House districts based in other counties.

18. The Texas House of Representative redistricting plan, HB 150 (H283), and the United States House of Representative redistricting plan, S.B. 4 (185), violate Section 2 of the Voting Rights Act. The Plaintiff has met the requirements of *Thornburg v. Gingles*, 478 U.S. 30 (1986) by demonstrating: the ability of creating both putative majority/Hispanic citizen voting age population districts and putative combined majority minority citizen voting age population; that Hispanics alone and with African American voters are politically cohesive; that there is an Anglo voting bloc that usually defeats the candidates preferred by Latino voters alone and with African American voters, and that under the totality of circumstances Plans H.B. 150 and Plan S.B. 4 deny Latino voters and African American voters an equal opportunity to participate in the political process and elect candidates of their choice. Therefore, Plaintiff MALC is likely to succeed on the merits of its Section 2 of the Voting Rights Act claim.

19. In addition Plans H.B. 150 (H283) and S.B. 4 (C185) were created with the intent to minimize and dilute the Latino and minority voting strength in violation of Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments of the United States Constitution. Therefore, Plaintiff MALC has

succeeded on the merits of its Section 2 of the Voting Rights Act and Constitutional 14th Amendment claims.

20. More specifically, the Plaintiff MALC, have made claims that have been established here with regard to reduction or elimination of voting strength of Latino and minority voters in HD 33, 117, 35, 78 and 41 in the enacted Texas House plan as well as making claims that been established here with regard to discriminatory intent in the development of the plan, affecting in particular the Texas House districts in Hidalgo, Cameron, Nueces, Harris, Dallas, Tarrant Bexar and El Paso counties.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2014, I electronically served the foregoing via ECF on all other parties in this litigation.

/s/ Jose Garza